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Please respond to jhakim

To: Group Ow-Docket@EPA
cc: amcata@bellsouth.net, 'AMCA' <amca@mosquito.org>
Subject: Attention Docket ID No. OW-2003-0063.

**Monroe County Vector Control
38 North Seventh Street
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Stroudsburg, PA 18360
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Water Docket
Environmental Protection Agency,
Mail Code 4101T,
1200 Pennsylvania Avenue, NW.
Washington, DC 20460

Attention: Docket ID No. OW-2003-0063.

As a member of the American Mosquito Control Association and Director of Monroe County Vector Control, I welcome the opportunity to submit comments regarding the "Interim Statement and Guidance on Application of Pesticides to Waters of the United States in Compliance with FIFRA" memorandum from G. Tracy Mehan, III (signed and dated, July 11, 2003) and Assistant Administrator for Water (4101) Stephen L. Johnson (signed and dated, July 11, 2003) Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Monroe County Vector Control fully supports the Interim Statement and Guidance document, and urges USEPA to issue a rule codifying its interpretation of Clean Water Act (CWA) provisions as not requiring a National Pollutant Discharge Elimination System (NPDES) permit for application of FIFRA-registered mosquito larvicides and adulticides in accordance with product labels.

We believe the nature of mosquito larvicides and adulticides are such that there is little reason to be concerned about their environmental impacts, if they are used in accordance with their approved labels. These products have been used for many years with extremely few problems, in no small part because of the extensive Agency review under FIFRA.

We urge EPA to conclude through a rulemaking that the application of a *larvicide* to waters of the United States at sites and for purposes authorized by their FIFRA registrations (or other clearance) does not constitute the discharge of a "pollutant." This is because when the larvicide is added to water, it is being added for its intended, beneficial, government-authorized purpose, and thus does not fall within the scope of the CWA's NPDES provision, which applies only to

material that is refuse or waste either before it is discharged into water or as soon as it is discharged. Similarly, use of an *adulticide* should not be regarded as the discharge of a “pollutant” both because it similarly is applied for its intended, beneficial, government-authorized purpose, rather than being discarded as refuse or waste, and because it is not discharged into waters of the United States but rather is applied in a manner calculated to lead it to remain in the atmosphere and reach waters of the United States only in relatively small amounts, if at all, and only incidentally, not deliberately. Analogous uses of other kinds of pesticides should be treated in the same manner.

Our mosquito control program has been successfully and safely using registered mosquito control chemicals for **30 years without incident**. We select and use products based on mosquito bionomics, time of year, precipitation levels, and application site. Because most of these products are so specific to the targeted species, there is little-to-no chance of a problem with non-targets or unintentional results.

In addition, these **public health** products are summarized as follows:

1. As a condition of registration, larvicides and adulticides used in mosquito control undergo rigorous and comprehensive testing to determine their toxic properties, impacts on non-targets and environmental fate. They are registered only when the EPA is convinced that usage in accordance with label stipulations does not represent undue risk to non-targets and the environment.
2. Mosquito larvicides are specifically formulated to be applied to water in order to produce active ingredient dilutions that will affect mosquito larvae only. Extensive testing mandated by FIFRA and monitored by EPA ensure minimal risk prior to registration
3. Mosquito adulticides are designed to be applied to air column above water and drift above water surface. Droplet mechanics promote drift in order to optimize contact with flying mosquitoes, and application parameters (meteorology, time of day, etc.) assist in drift and serve to minimize deposition. Application rates of less than ounce per acre are designed to be non-residual, with rapid degradation to minimize amount potentially reaching ground/water.
4. These products are applied for their intended, legal, beneficial purpose and do not constitute discharges of waste as envisioned by the CWA NPDES provision

MCVC also fully supports two further regulatory changes originally recommended by the American Mosquito Control Association (AMCA) that will ensure eliminate regulatory confusion, promote ruling consistency with the Code of Federal Regulations and obviate unnecessary future litigation. First, the definition of the term “pollutant” set forth at 40C.F.R. § 122.2 should be amended with the addition of a third subsection as follows:

- (c) A pesticide product that is registered or otherwise approved under the Federal Insecticide, Fungicide and Rodenticide Act for the purpose of control of mosquito larvae or adults, other vectors (as defined by section 2(o) of that Act), or other outdoor aquatic pests and is used for

such purpose in substantial compliance with all provisions of its approved label and labeling that are relevant to protection of waters of the United States.

Second, the definition of the term “discharge of a pollutant” in 40 CFR 122.2 should be amended by adding the following sentence at the end of the definition:

“This term also does not include the application or use of a pesticide product that is registered or otherwise approved under the Federal Insecticide, Fungicide and Rodenticide Act for the purpose of control in the atmosphere of adult mosquitoes or other vectors (as defined by section 2(o) of that Act) and is used in substantial compliance with all provisions of its approved label and labeling that are relevant to protection of waters of the United States.”

Thank you for the opportunity to comment on the Interim Statement and Guidance Document. We look forward to the Agency performing a rulemaking to further clarify its position regarding this crucial public health issue. Please help us continue to protect the public health in a responsible and cost-effective manner.

Sincerely,

Jacquelyn A. Hakim, M.S., M.P.H.
Director

12 September 2003